Contingency Real Estate Support

Real Estate Authorities

Prototype June 2001

Objective

Obtain a basic knowledge of legal authorities and delegations for real property acquisition in support of natural disaster response and recovery operations.

Authority Questions

- Has the requirement been approved?
- What is the authority to acquire?
- Is GSA involved in this action?
- Who has the delegation to *execute* the instrument or is a specific delegation needed?
- Is the annual rent more than $500,000?
- Does the economy policy apply?
- Are funds available? What is my source of funding?

CONUS Leasing Authorities

- 10 USC 2661 – Leasing authority (buildings/space) for one year lease
- 10 USC 2672 - Leasing authority (land, not space) where total lease cost is $500,000 or less
- 10 USC 2828 – Leasing authority (family housing – CONUS/OCONUS)
- 10 USC 18233 – Reserves
- FPMR/Delegated Authority from GSA

OCONUS Leasing Authorities

- 10 USC 2675 – General Overseas leasing authority (other than family housing)
- 10 USC 2828 – Family Housing (CONUS/OCONUS)

Economy Policy

- Economy Act (40 USC 278a) repealed November 1988
- Department of Army has maintained “Economy Act” restrictions in effort to control lease costs
- Current Economy Policy states:
  - Annual rent cannot exceed 20% of fair market value
  - Cost of permanent alternations, maintenance and/or repair of leased space cannot exceed 30% of the unserviced rent for first year of lease term or 30% for entire term in less than one year

Economy Policy (cont'd)

- The Army Economy Policy does not apply to civil leases, OCONUS, leases where annual rent is $2,000 or less, leases of unimproved land, leases involving temporary alterations, lease restoration provisions, and leaseholds acquired through condemnation
- Consequently, the Army Economy Policy does not apply to leases in support of natural disaster response efforts

Congressional Notification Requirements

- 10 USC 2828 – Housing leases exceeding $500,000 annual rent (overseas)
- 10 USC 2662 – “Title 10” – leases exceeding $500,000 annual rent
  - does not apply to CW leases and foreign country leases
  - excepted for declaration of war; national emergencies pursuant to National Emergencies Act; and declared emergencies/disaster pursuant to Stafford Act

Delegated Authority From GSA

- The Federal Property and Administrative Services Act of 1949 (40 USC 471-493, as amended.)
- Reorganization Plan No. 18 of 1950 (40 USC 304C)
- Federal Property Management Regulations (41 CFR, Chapter 101)
  - Section 101.18.101 – GSA will lease building space for Federal agencies, except as provided below
  - Section 101.18.102(a) – Leasing by agencies possessing independent statutory leasing authority are not subject to GSA approval or authority

Delegated Authority From GSA (cont'd)

- Federal Property Management Regulations
  - Section 101-18.104(a) – Agencies are authorized to lease when:
    - lease costs nothing (or $1.00/year) and term does not exceed 1 year.
    - GSA grants specific delegation to agency (includes general purpose space).
    - Section 101-18.104.2 categorical space delegations up to 20 years firm term, inside or outside urban areas
    - Section 101-18.104-3 – special purpose space

Real Property Regulations

- AR 405-10 (Acquisition)
- AR 405-15 (Claims)
- AFI 32-9001 (Air Force Acquisition)
- ER 405-1-12 – Real Estate Handbook
- FPMR – Federal Property Management Regulations, Subpart 101-18

General Emergency Activity Authorities

- Public Law 84-99, Flood and Coastal Storm Emergencies Act
  - Public Law 99-662, Water Resources Development Act of 1986, Section 917, amends PL 84-99 and provides "Gap" authority
- Public Law 93-288, Disaster Relief Act of 1974, as amended (Robert Stafford Disaster Relief and Emergency Act)

Public Domain Land Emergency Withdrawals

Engle Act (43 USC 155) Emergency Withdrawals of Public Domain Land, Section 2310.5

When an emergency exists and extraordinary measures must be taken to protect natural resources or resource values, Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency.

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Generally used for fires

Public Domain Land Emergency Withdrawals (cont'd)

- Emergency withdrawal is effective when signed; NTE 3 years; may not be extended
  - *If determined emergency withdrawal should continue, normal withdrawal application submitted to BLM*
- When emergency withdrawal is signed, Secretary sends notice on same day to Congress

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Regulations and References Natural Disaster

- ER 405-1-12, Real Estate Handbook
- ER 500-1-1, Natural Disaster Procedures (draft)
- EP 500-1-8, Implementing Doctrine for Civil Disaster Operations (draft)
- USACE Mission and Function Guidebooks for ESF #3 Mission Support and Execution
- Federal Response Plan (updated 1999)
- AR 500-60, Emergency Employment of Army and other Resources, Disaster Relief
- ER 11-1-320, Army Programs, Civil Works Emergency Management Programs

Recognizing and Understanding Delegation of Execution Authority

- Execution authority originates with the Secretary of a military department
- Execution authority reaches field level through re-delegation

Recognizing and Understanding Delegation of Execution Authority (cont'd)

- Each delegation may have limitations in dollar amount and possible geographic area
  - A re-delegation cannot exceed the authority granted to the delegator.
  - A delegation may by its terms prohibit re- delegation

Recognizing and Understanding Delegation of Execution Authority (cont'd)

- Delegation of execution authority within US Army Corps of Engineers runs from Secretary of the Army to Chief of Engineers to Division Commander to District Commander.
- The Chief of Engineers, Division Commander and District Commanders are generally given authority to re-delegate to their Chiefs of Real Estate.

Recognizing and Understanding Delegation of Execution Authority (cont'd)

- Consequences of actions taken in the absence of legal or execution authority
  - Impedes mission
  - Costly remedial actions
  - Disciplinary action
  - Personal liability

Real Estate Authorities

Questions?